MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 252 OF 1996

LALCHAND MEGHRAJ KUMAVAT .. APPELLANT

VERSUS

THE STATE OF MAHARASHTRA .. RESPONDENTS

Mr. Manoj J. Bhatt for appellant

Mr. Y. S. Shinde, APP

CORAM: **SMT. RANJANA DESAI, J.**

DATE: OCTOBER 17, 2007.

ORAL JUDGMENT:

. The appellant was tried in the court of Sessions for Greater Bombay in Sessions Case No. 110 of 1992 for offences punishable under Sections 452, 392 and 397 of the Indian Penal Code ("IPC" for short). He was also charged under Sections 25(1-B)(a), 27(1) read with Section 5 and Section 2 of the Indian Arms Act, 1959. Quoting of Indian Arms Act, 1959 appears to be a mistake. It should read as the Arms Act, 1959. The case of the prosecution was that he committed the said offences along with the absconding accused Chotu and two other absconding accused. However, they could not be arrested. Therefore, the appellant alone was

charge-sheeted and tried.

2. By the impugned judgment and order the learned Sessions Judge convicted the appellant under Sections 392 and 397 of the IPC and sentenced him to suffer R.I. for seven years. He was also sentenced to undergo imprisonment of seven years with a fine of Rs.500/- for committing the offence under Section 452 of IPC. In default of payment of fine he has to undergo imprisonment for one month. He was also convicted and sentenced to undergo imprisonment of one year and fine of Rs.200/-. In default he has to undergo sentence of 15 days under Section 25(1)(b) of the Arms Act, 1959. He was also convicted and sentenced to undergo three years imprisonment under Section 27(1) of the Arms Act 1959 for using country-made revolver. He was also fined to pay Rs.300/-. In default of payment of fine he has to undergo one month’s imprisonment. The substantive sentences were ordered to run concurrently. Being aggrieved by this judgment and order, the appellant has preferred the present appeal. For the sake of convenience I shall refer to the appellant as the accused.

3. At the trial the case of the prosecution was that complainant Nathuram Thakurshah Gupta., a

commission agent by profession runs his business of exchanging soiled, torn and old notes at 20/30, Gulshan Mansion, 2nd floor, Princess Street, Old Hanuman Road, Bombay. On the day of incident i.e. on 9/10/91, he had opened his office as usual at 9 a.m. and started his work. His nephews Rajendraprasad Gupta and Gopalprasad Gupta were with him. One customer from Kanpur viz. Ramlal Bhatia was also present in the office. He had brought some old and soiled notes for exchange on commission basis. The complainant was sorting out those notes. While work was in progress four persons entered the office at about 15-45 hours and closed the doors from inside. One of the persons removed a revolver from the inner side of his shirt and kept it on the chest of the complainant. Other robber removed a chopper from his shirt and kept it on the chest of the customer Ramlal Bhatia. The third robber was also armed with chopper. He threatened the nephew of the complainant Rajendraprasad Gupta and asked him to keep quiet. The fourth robber cut the telephone wire with the help of barber’s razor and pointed the same at Gopalprasad Gupta other nephew of the complainant. He ordered them not to make any noise.

4. The person who had pointed a chopper at Ramlal Bhatia removed a bundle of adhesive tape from his pocket, kept chopper aside and affixed adhesive tape on the mouth of the complainant and all other above referred persons. He also tied hands of the complainant, his nephews and Ramlal Bhatia with the help of adhesive tape. While he was tying hands, the other two robbers started collecting notes in the bag. After sometime the person who was tying the adhesive tape also started collecting notes and keeping the same in the bag. The robbers also took out notes from the cream coloured VIP bag of Ramlal Bhatia and collected the notes in the bag. The person who was armed with revolver also collected two gold rings which were kept aside by the complainant. He also took out wrist watch of gold of Rado Company and kept all those articles in his rear side pocket. He snatched a gold chain from the neck of the complainant. He tried to find out whether Ramlal Bhatia was wearing any valuable articles but he could not find anything. Thereafter three robbers left the place. One person who was holding revolver stayed there for sometime and he left the office last. While going away he bolted the doors from outside.

5. After the robbers left, Ramlal Bhatia some how untied himself, opened the window and shouted "Chor Chor". He removed the adhesive tape of other inmates. They all started shouting as "Chor Chor". On hearing them someone opened the door from outside. Thereafter the complainant and Ramlal Bhatia went to L.T. Marg Police Station to lodge the complaint.

6. PW 7 Rajendra Sayajirao Chavan, P.N. No. 3851 was on patrolling duty near M. J. Market. Having come to know about the incident and having heard the commotion he phoned the police station and called for police help. Immediately thereafter the police arrived at the scene of offence. PW 7 Rajendra Sayajirao Chavan informed the police that there was a robbery. While this thing was narrated one girl shouted from the 2nd floor of Rajada building that some robbers were hiding there. On hearing her cries. PW 7, PC S.B. Jadhav, and other staff went upstairs. PW 7 PC Jadhav saw two persons jumping from the window on roof of M. J. Market. PW 7 PC Jadhav and other staff members came down and ran towards Champa Galli on which M.J. market was situated. PW 7 PC Jadhav saw one person coming down with the help of electricity

pole. He was apprehended by PW 7 PC Jadhav and other police staff.

7. While the complaint was being reduced into writing, PW 7 PC Jadhav and his staff brought the accused to the police station. The complainant immediately identified the accused as one of the robbers. He described the role played by the robbers. He identified the gold rings and RADO wrist watch, which were shown to him. Soiled currency notes found with the accused were also identified by him. The complainant also identified the revolver when it was shown to him. The complainant gave description of the other three robbers. Thereafter the complaint Exh.-7 was registered at Crime No. 445/91.

8. Personal search of the accused was taken in the presence of panchas. A revolver, one gold wrist watch and two rings and soiled notes were taken charge of under panchnama. After completion of the investigation the accused was charged as aforesaid. As already stated, the other accused could not be traced and, therefore, only the present accused was put up for trial.

9. In support of its case the prosecution examined 10 witnesses. The prosecution case mainly rests on the evidence of eye-witnesses i.e. the complainant PW 1 Nathuram Gupta and PW 2 Gopalprasad Gupta. The defence of the accused was one of denial. After perusing the evidence on record, the learned Sessions Judge convicted the accused as aforesaid and hence this appeal.

10. I have heard the learned counsel appearing for the appellant-accused and the learned APP and with their assistance I have gone through the evidence on record.

11. The learned counsel for the appellant-accused contended that the learned Sessions Judge erred in convicting the accused. He submitted that the evidence of the eye-witnesses is discrepant and no reliance should have been placed on it. He submitted that it was wrong to convict the accused when the other accused could not be traced and, therefore, could not be tried. He submitted that in the absence of the other accused the present accused could not have been held responsible for the offence in question. The learned counsel submitted that in any event the accused has been in

custody for about five years and seven months. Therefore, out of seven years of sentence which is imposed on him he has served more than 3/4th of sentence. The learned counsel submitted that when the offence was committed, the accused was 24 years old. About 15 years have passed by. He has two children, one aged seven years and other aged about one and a half years. The accused owns a shop and is trading in stationery. He is paying income-tax. In support of his submissions, the learned counsel tendered in the court Xerox copies of the ration card, Income-tax Returns as well as the maintenance receipts. The said Xerox copies filed by the accused are taken on record and marked "X-Colly."

12. The learned counsel submitted that in view of this a kindly view may be taken and the accused may be released on the sentence already undergone by him.

13. The learned APP on the other hand submitted that the evidence adduced by the prosecution is cogent and credible. The accused was caught red handed and, therefore, the conviction and sentence is perfectly justified.

14. I have carefully perused the evidence of PW 1 Nathuram Gupta and PW 2 Gopalprasad Gupta. They are eye-witnesses. Their evidence about the actual occurrence is consistent. There are no discrepancies in their evidence. It is a fact that the accused was caught red handed. A revolver was recovered from him. Apart from revolver two gold rings, soiled notes, a Rado wrist watch were recovered from him. These articles were attached under panchnama. The complainant identified the accused as well as the articles seized from him. The evidence of the complainant is corroborated by the evidence of the other eye-witnesses. The panchnama is also duly proved by the panchas. In the circumstances the impugned judgment and order convicting the accused under Sections 452 and 392 of the I.P.C. and under Sections 25(1-B)(a), 27(i) read with Section 5 and Section 2 of the Arms Act, 1959 deserves to be confirmed. However, the accused did not cause any grievous hurt to anybody. There is no clear evidence that he attempted to cause grievous hurt to any person or attempted to cause death of any person. Hence his conviction and sentence under Section 397 of the I.P.C. will have to be set aside.

15. I am informed that the accused has already undergone 5 years and 7 months' sentence. This is not disputed by the learned APP. Therefore, out of seven years, more than 3/4th of the sentence has been undergone by the accused. The documents produced before me indicate that the accused has now settled down in life. He has two small children. He is present in the court and I have interviewed him. He has told me that he owns a shop. He pays income-tax. He pays maintenance charges to the society. The responsibility of children and other family members is on his shoulders. He has assured me that he will lead a respectable life and not revert to such activities in future.

16. In the circumstances of the case, therefore, in my opinion, sending the accused back to the jail will not serve any purpose. It may in fact be counter productive. Therefore, the sentence undergone by the accused so far should be treated as sentence for the offences for which he is convicted and which conviction is upheld by me. Hence the following order:

. "The impugned judgment and order dated 29/2/96

convicting accused Lalchand Meghraj Kumavat under Sections 452 and 392 of the I.P.C. and under Sections 25(1-B)(a), 27(i) read with Section 5 and Section 2 of the Arms Act, 1959 is confirmed. He is, however, acquitted of the charge under Section 397 of the I.P.C. Accused Lalchand Meghraj Kumavat has undergone about 5 years and 7 months of the sentence. The said sentence shall be treated as sentence for the offences for which he is convicted. Sentence of 7 years is set aside and is substituted by the sentence already undergone by the accused.

. The accused is on bail. There is no question of his surrendering to the bail. His bail bond stands cancelled. The appeal is disposed of in the aforestated terms.

JUDGE.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 252 OF 1996

LALCHAND MEGHRAJ KUMAVAT .. APPELLANT

VERSUS

THE STATE OF MAHARASHTRA .. RESPONDENTS

Mr. Manoj J. Bhatt for appellant

Mr. Y. S. Shinde, APP

CORAM: **SMT. RANJANA DESAI, J.**

DATE: OCTOBER 17, 2007.

OPERATIVE PART OF THE ORDER

. For the reasons stated in the oral judgment,

this court has passed the following order:

"The impugned judgment and order dated 29/2/96 convicting accused Lalchand Meghraj Kumavat under Sections 452 and 392 of the I.P.C. and under Sections 25(1-B)(a), 27(i) read with Section 5 and Section 2 of the Arms Act, 1959 is confirmed. He is, however, acquitted of the charge under Section 397 of the I.P.C. Accused Lalchand Meghraj Kumavat has undergone about 5 years and 7 months of the sentence. The said sentence shall be treated as sentence for the offences for which he is convicted. Sentence of 7 years is set aside and is substituted by the sentence already undergone by the accused.

. The accused is on bail. There is no question of his surrendering to the bail. His bail bond stands cancelled. The appeal is disposed of in the aforestated terms.

JUDGE.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 252 OF 1996

DATE OF DECISION:17/10/2007

Submitted for
approval.

THE HON'BLE (SMT.) JUSTICE RANJANA DESAI:

THE HON'BLE SHRI JUSTICE :

1. Whether Reporters of Local Papers)
be allowed to see the Judgment?)

2. To be referred to the Reporters or)
not?)

3. Whether Their Lordships wish to)
see the fair copy of the Judgment?)

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?)

5. Whether it is to be circulated to the Civil Judges?)

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur, Aurangabad and Goa Offices?)